



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

STEVEN H. HILFINGER  
DIRECTOR

## ENROLLED BILL ANALYSIS

**BILL NUMBER:** Senate Bill 462 (S-2)

**TOPIC:** Nursing Home reporting requirements for abuse, mistreatment and neglect

**SPONSOR:** Senator Bieda

**CO-SPONSORS:** Senators Schuitmaker, Emmons, Colbeck, Rocca, Young, Nofs, Jones, Hansen, Hildenbrand, Proos, and Kahn

**COMMITTEE:** Senate Families, Seniors, and Human Services  
House Families, Children, and Seniors

**ADMINISTRATION POSITION:** The Administration is neutral on the bill.

### PROBLEM/BACKGROUND

Section 333.21771 of the Public Health Code currently requires a nursing home employee who "becomes aware" of a "known" act by a licensee, administrator, or employee to abuse, mistreat, or harmfully neglect a patient to report that act to the nursing home administrator or nursing director. In turn, the administrator or nursing director must report such acts by telephone to the Michigan Department of Licensing and Regulatory Affairs (LARA) for investigation. In addition, physicians or other licensed health care personnel of a hospital or other health care facility to which a patient is transferred must report "known" incidents of abuse, mistreatment or neglect. Under current law, "suspicion" of abuse is not considered to be enough for LARA to investigate.

### DESCRIPTION OF BILL

Senate Bill 462(S-2) amends Part 217 of the Public Health Code by removing "becomes aware" and replacing it with "reasonable suspicions" of abuse, mistreatment, or neglect. Under the bill, nursing home employees who have reasonable suspicion of abuse, mistreatment, or neglect must report the act to the nursing home management, the Michigan Department of Licensing and Regulatory Affairs (LARA) and to one or more local law enforcement agency. In addition, physicians or other licensed health care personnel of a hospital or other health care facility to which a patient is transferred must report any "reasonable suspicion" of abuse, mistreatment or neglect. The Bureau of Health Systems within LARA is obligated to investigate each report received.

### SUMMARY OF ARGUMENTS

#### *Pro*

Reporting suspicions of abuse, mistreatment, and neglect to the nursing home management, LARA, and to local law enforcement can serve to protect nursing home residents from further abuse, mistreatment or neglect.

#### *Con*

The bill lacks clarity and direction in the following areas:

- What penalties would apply to a nursing home employee for the failure to report a "reasonable suspicion?"
- When and if nursing home administration must investigate the reported suspicion in any way to safeguard the patient resident who has been subjected to abuse, mistreatment, or neglect.

LARA is an equal opportunity employer/program.  
Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

- What action must law enforcement entities take once they receive a report of “reasonable suspicion?”
- Whether or not another resident or a visitor of the nursing home can report a “reasonable suspicion” of abuse, mistreatment or neglect?
- Key terms used throughout the bill are subject to interpretation and are difficult to enforce. For example, terms such as “serious bodily injury” or “physical, mental or emotional abuse, mistreatment, or harmful neglect.”

Additionally, the bill does not require the nursing home administration to immediately investigate or act in any way to safeguard the resident who has been subjected to abuse, mistreatment, or neglect. The only requirement is to report to the Department and law enforcement. Due to the high number of reports received by the department, it is not possible to be onsite immediately in many cases to secure the situation. It is essential that the nursing home administration be held responsible to thoroughly investigate, protect the affected resident and other residents from further abuse, mistreatment or neglect in addition to reporting to the State and law enforcement officials.

#### **FISCAL/ECONOMIC IMPACT**

**State/Department:** Funding for nursing home regulation in Michigan has been inadequate as license fees have not been increased for 30 years. State General Fund dollars have been reduced due to economic conditions in the State. Nursing home license fees equal \$2.20 annually per licensed bed. With approximately 47,000 licensed nursing home beds statewide, the total funding generated is about \$103,000. The increased reporting requirements will have a negative fiscal impact on LARA’s Bureau of Health Systems who is required to investigate all reports in accordance with Subsection 21771(5) of the Public Health Code.

It should be noted that the Legislature included the following boilerplate language in PA61 of 2011:

Sec. 731. (1) The bureau of health systems shall prepare a report detailing the number of facilities, locations, and beds for each type of health facility licensed, certified, inspected, or otherwise regulated by the bureau. The report shall also include the bureau’s cost to license, certify, inspect, or otherwise regulate each type of facility. The data required by this subsection shall be collected and reported on acute care hospitals, home health agencies, hospices, hospice residences, psychiatric units in general hospitals, psychiatric hospitals, partial hospitalization psychiatric programs, outpatient surgical facilities, laboratories, end stage renal disease facilities, rural health clinics, substance abuse programs, long-term care facilities including nursing homes, hospital long-term care units, county medical care facilities, and radiation machines.

(2) By February 1, the bureau of health systems shall work with interested stakeholders to recommend to the governor and the legislature a schedule of fees to be charged by the bureau for regulating health facilities. The fee schedule proposed by the bureau shall bear a direct relationship to the cost of the service or act, including overhead expenses. The report shall also recommend the necessary statutory and administrative rule changes necessary to implement the recommended fee schedule.

The required report can also be found online at:

[http://www.michigan.gov/documents/lara/Sec\\_731\\_2\\_BHS\\_Licensed\\_Health\\_Facilities\\_379160\\_7.pdf](http://www.michigan.gov/documents/lara/Sec_731_2_BHS_Licensed_Health_Facilities_379160_7.pdf)

**Local Government::** The bill may also have a negative fiscal impact on law enforcement agencies across the State to whom SB 462 (S-2) requires additional reporting. This impact is unclear since the bill does not specify what action law enforcement is to take upon receipt of said reports.

#### **ANY OTHER PERTINENT INFORMATION**

The Department has been responsible for assisting the federal government in receiving, prioritizing, and investigating similar reported “allegations” of abuse, mistreatment, neglect, injuries of unknown and suspicious origin for certification purposes, and reasonable suspicion of a crime. Without specific definitions of the terms used in describing the reporting requirements, it becomes more difficult to enforce. One area of difficulty is in the use of the term “neglect”. Generally speaking neglect is defined as failure to provide goods and services necessary to avoid physical harm, pain, mental anguish, or mental illness. Failure to provide adequate supervision is a form of neglect that can lead to falls, burns, and elopements. Failure to monitor blood sugar in diabetics, failure to provide necessary medications and monitor their effects, adequate staffing and supplies, and maintaining comfortable building temperatures can all be associated with neglect.

Cards in support were submitted by the Area Agency of Aging Association, Kalamazoo County Advocates for Senior Issues, AARP, Michigan Judges Association and the Elder Law and Disability Rights Section of the State Bar of Michigan.

There were no cards submitted in opposition.

#### **ADMINISTRATIVE RULES IMPACT**

None at this time